



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS-FV-11-0094; FV12-915-1 IR]

Avocados Grown in South Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container of Florida avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Assessments upon Florida avocado handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the

Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program,

AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under
Marketing Order No. 915, as amended (7 CFR part 915),
regulating the handling of avocados grown in South Florida,
hereinafter referred to as the "order." The order is
effective under the Agricultural Marketing Agreement Act of
1937, as amended (7 U.S.C. 601-674), hereinafter referred to
as the "Act."

The Department of Agriculture (USDA) is issuing this
rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order
12988, Civil Justice Reform. Under the marketing order now
in effect, Florida avocado handlers are subject to
assessments. Funds to administer the order are derived from
such assessments. It is intended that the assessment rate
as issued herein will be applicable to all assessable
Florida avocados beginning April 1, 2012, and continue until
amended, suspended, or terminated.

The Act provides that administrative proceedings must
be exhausted before parties may file suit in court. Under
section 608c(15)(A) of the Act, any handler subject to an
order may file with USDA a petition stating that the order,

any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and

discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2010-11 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 14, 2011, and unanimously recommended 2012-13 expenditures of \$324,575 and an assessment rate of \$0.25 per 55-pound bushel container of avocados. In comparison, last year's budgeted expenditures were \$349,575. The assessment rate of \$0.25 is \$0.12 lower than the rate currently in effect. The Committee recommended the decrease in assessment rate due to a reduction in expenditures for research and to help reduce industry costs.

The major expenditures recommended by the Committee for the 2012-13 year include \$101,705 for salaries, \$75,000 for research, \$48,000 for employee benefits, and \$25,800 for insurance and bonds. Budgeted expenses for these items in 2011-12 were \$101,705, \$100,000, \$48,000, and \$25,800, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and available reserves. Florida avocado shipments for the year are estimated at 1,000,000 55-pound bushel containers which should provide \$250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$315,000) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses as stated in § 915.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA

will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012-13 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as

those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service (NASS), the average price for Florida avocados during the 2011-12 season was around \$16.50 per 55-pound bushel container and total shipments were near 1,200,000 55-pound bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than \$750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container of avocados. The Committee unanimously recommended 2012-13 expenditures of \$324,575 and an assessment rate of \$0.25 per 55-pound bushel container. The assessment rate of \$0.25 is \$0.12 lower than the 2011-12 rate. The quantity of assessable Florida avocados for the

2012-13 season is estimated at 1,000,000. Thus, the \$0.25 rate should provide \$250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserves, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2012-13 year include \$101,705 for salaries, \$75,000 for research, \$48,000 for employee benefits, and \$25,800 for insurance and bonds. Budgeted expenses for these items in 2011-12 were \$101,705, \$100,000, \$48,000, and \$25,800, respectively.

The Committee recommended the decrease in assessment rate due to a reduction in expenditures for research and to help reduce industry costs.

The Committee reviewed and unanimously recommended 2012-13 expenditures of \$324,575 which included decreases in research programs. Prior to arriving at this budget, alternative expenditure levels were discussed based upon the relative value of various research projects to the Florida avocado industry. The assessment rate of \$0.25 per 55-lb bushel container of assessable avocados was then determined by reviewing the total recommended budget, the quantity of assessable avocados, estimated at 1,000,000 55-lb bushel containers for the 2012-13 season, and available reserves.

Assessments will be approximately \$74,575 less than the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2010-11 season could range between \$5.00 and \$56.00 per 55-pound bushel container of avocados. Therefore, the estimated assessment revenue for the 2012-13 season as a percentage of total grower revenue could range between .4 and 5 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 14, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule,

including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189 Generic OMB Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2012-13 fiscal period begins on April 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 915

Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915 - AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2012, an assessment rate of \$0.25 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: June 26, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

Billing Code 3410-02P

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